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Supreme Court, U.S.
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No. 08-526

In the

Supreme Court of the United State

Yong Li,

Petitioner,

v.

Raytheon Company, Ian C. Mitchell, and Arthur Buliung,

Respondents.

Civil Appeal To the
United States Court of Appeal
For The First Circuit

Petitioner's Reply to Brief in Opposition

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Dated: December 01, 2008

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*Porter, 419 F.3d at 895 (*quoting *Kachmar, 109 F.3d at 177)* 2

ARGUMENT IN REPLY

I. THE SUPREME COURT SHOULD STRIKE THE USING OF TEMPORAL PROXIMITY AS A MUST-FACTOR TO ESTABLISH CAUSAL CONNECTION ELEMENT OF PRIMA FACIE CASE IN RETALIATION CLAIMS

The Respondent did not directly argue for the First Circuit's ruling that "There ***must*** be some temporal proximity between the protected conduct (...) and the alleged retaliation." (emphasis supplied). The Respondent, however, quoted the decision below which stated "[g]aps of months and years ***weaken*** any inference of a causal connection." (emphasis supplied). The Respondent argued that the later "is not in conflict with that of other courts of appeals." Unfortunately, in reality, the causal connection has nothing to do with the gaps of months and years, although an existence of temporal proximity could prove the causal connection. In another word, the "[g]aps of months and years ***weaken*** any inference of a causal connection" is illogical.

> It is important to emphasize that it is causation, not temporal proximity itself, that is an element of plaintiff's prima facie case, and temporal proximity merely provides an evidentiary basis from which an inference can be drawn. The element of causation,

> which necessarily involves an inquiry into the motives of an employer, is highly context-specific. When there may be valid reasons why the adverse employment action was not taken immediately, the absence of immediacy between the cause and effect does not disprove causation.
>
> *Porter, 419 F.3d at 895 (*quoting *Kachmar, 109 F.3d at 177)*.

The Supreme Court should stop the using of temporal proximity as a ***must***-factor to establish causal connection element of prima facie case in retaliation claims.

II. IT IS NOT NECESSARY IN THIS CASE TO DECIDE WHETHER THE PERSON, TO WHOM THE PROTECTED ACTIVITY AGAINST, PLAYED A ROLE IN THE ALLEGED ADVERSE EMPLOYMENT ACTIONS BECAUSE THE FIRST CIRCUIT'S RULING WAS SOLELY BASED ON TEMPORAL PROXIMITY TO ESTABLISH THE CAUSAL CONNECTION ELEMENT.

The Respondent changed the topic. The Respondent attempted to argue that because the Petitioner could not prove that Jen Lewis, to whom the protected activity against, played a role in the alleged adverse employment actions, so that the Petitioner "adduced no alternative evidence that would support a finding of causation," and so that "it is not necessary ... to decide whether temporal

proximity ... is required to satisfy the causal connection element ..."

It is just coincident that in *Dixon v. Gonzales, 481 F. 3d 324 (6th Cir. 2007); Porter v. California Dep's of Corr., 419 F. 3d 885 (9th Cir. 2005); Ford v. General Motors Corp., 305 F. 3d 554-55 (6th Cir. 2002); Kachmar v. SunGard Data Sys., Inc., 109 F.3d 173, 177 (3d Cir. 1997),* the persons to whom the protected activity against became the harassers and played key roles in the adverse employment actions. It does not mean that it would become a required factor that these persons themselves must directly play a role. Causal Connection element should depend on case by case, and the way of retaliation various based on human's imagination.

The concept of retaliator should not limit on one person, because it could be a company click, a group, or a political class. For those retaliation cases involved whistleblowers for public interest, anyone held power could become a retaliator.

CONCLUSION

For the foregoing reasons, and for the reasons discussed more fully in her Petition, Yong Li prays that this Court grant her petition for a writ of certiorari, and reverse the judgment below.

Respectfully submitted,

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/s/

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